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**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 99-0507P**
Gross and Adjusted Gross Income Tax
Years Ended 06/30/94, 06/30/95, 06/30/96, 02/14/97, and 12/31/97

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer is a third party administrator for HMO's and has two Indiana business locations.

Taxpayer protests the penalty for 1994 and 1995 and states the years under audit relates to years prior to its ownership and the discrepancies were not willful or intentional.

A review of the audit indicates the taxpayer had no detail records to support the amounts reported for gross income tax or to calculate the amount subject to gross income tax on either a gross earnings or gross receipts basis. Based upon an Indiana Department of Insurance report for fiscal year ended June 30, 1997, showing a ratio of Indiana receipts of 11.2% and a comparison of the other years as reported, the 6/30/96 and 2/14/97 ratios as reported were accepted for the audit as being reasonable. For fiscal years ended June 30, 1994 and June 30, 1995, the tax years were recalculated using a three-year average ratio as the best information available to determine the Indiana receipts. For its processing office located in Indiana, taxpayer records for the June 30, 1996 year indicate that the percentage of revenue applicable to Indiana should be 16.65% based upon their own calculation. This percentage was accepted for the audit period as reasonable and has been applied to all audit years.

For adjusted gross income, taxpayer failed to add back real estate and personal property tax, state income tax, and other miscellaneous adjustments, which carried no tax effect. The numerator of the sales factor was adjusted to include the additional receipts shown as audit adjustments for gross income tax purposes.

I. **Tax Administration** –Penalty

**DISCUSSION**

Taxpayer was assessed a negligence penalty because it did not have detailed records to determine the correct amount of gross receipts that should have been reported for Indiana and the results of the audit was based upon best information available. The assessments amount to 71.5% and 46% of tax due for years ended 1994 and 1995, respectively.

Taxpayer states it did not own the companies in 1994 and 1995, therefore no penalties should be due.

Taxpayer, however, acquired the company and its liabilities. The assessments in 1994 and 1995 amounted to 58.5% additional tax due for both years; taxpayer had several other errors throughout the audit period for issues that are clear in the Indiana Code and Regulations.

The department finds that a negligence penalty is proper.

**FINDING**

Taxpayer's protest is denied.

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